

Introduced by Senator Scott
(Principal coauthor: Assembly Member Leno)

February 16, 2005

An act to amend Section 1522 of the Health and Safety Code, and to amend Section 362.05 of the Welfare and Institutions Code, relating to child care.

LEGISLATIVE COUNSEL'S DIGEST

SB 358, as introduced, Scott. Child care.

(1) Existing law requires, as a condition of the State Department of Social Services or other licensing agency issuing a license, permit, or certificate of approval, as appropriate, for a person to operate or to provide direct care services in a community care facility, residential care facility for persons with a chronic life-threatening illness, residential care facility for the elderly, or child day care facility, the fingerprinting of, and criminal record clearance for, applicants and persons to be employed by, reside at, or be present in any of these facilities, except as specified.

This bill would further exempt from those requirements individuals engaged by a licensed or certified foster parent to supervise a foster child for periods not exceeding 24 hours. The bill would also hold caregivers to a prudent parent standard in the selection of babysitters, as specified.

(2) Existing law provides that every dependent child shall be entitled to participate in age-appropriate extracurricular, enrichment, and social activities, and that state and local regulations and policies may not prevent or create barriers to participation in those activities. Existing law also requires state and local entities to ensure that private agencies that provide foster care services to dependent children,

promote and protect the ability of dependent children to participate in those activities.

This bill would authorize any licensed or certified foster parent, relative caregiver, or nonrelative extended family member to arrange occasional short-term babysitting for a foster child. The bill would require those caretakers to use a prudent parent standard when, and to take reasonable steps in, selecting that babysitter.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to streamline
2 the process by which foster parents, relative caregivers, and
3 adoptive parents become licensed by the state, while ensuring the
4 safety and security of children in their care. Duplicative
5 background checks and fingerprinting, now required under
6 current law and regulation, should be eliminated in a manner that
7 both expedites permanent planning and protects foster children.

8 SEC. 2. Section 1522 of the Health and Safety Code is
9 amended to read:

10 1522. The Legislature recognizes the need to generate timely
11 and accurate positive fingerprint identification of applicants as a
12 condition of issuing licenses, permits, or certificates of approval
13 for persons to operate or provide direct care services in a
14 community care facility, foster family home, or a certified family
15 home of a licensed foster family agency. Therefore, the
16 Legislature supports the use of the fingerprint live-scan
17 technology, as identified in the long-range plan of the
18 Department of Justice for fully automating the processing of
19 fingerprints and other data by the year 1999, otherwise known as
20 the California Crime Information Intelligence System (CAL-CII),
21 to be used for applicant fingerprints. It is the intent of the
22 Legislature in enacting this section to require the fingerprints of
23 those individuals whose contact with community care clients
24 may pose a risk to the clients' health and safety.

25 (a) (1) Before issuing a license or special permit to any person
26 or persons to operate or manage a community care facility, the
27 State Department of Social Services shall secure from an
28 appropriate law enforcement agency a criminal record to

1 determine whether the applicant or any other person specified in
2 subdivision (b) has ever been convicted of a crime other than a
3 minor traffic violation or arrested for any crime specified in
4 Section 290 of the Penal Code, for violating Section 245 or
5 273.5, of the Penal Code, subdivision (b) of Section 273a of the
6 Penal Code, or, prior to January 1, 1994, paragraph (2) of Section
7 273a of the Penal Code, or for any crime for which the
8 department cannot grant an exemption if the person was
9 convicted and the person has not been exonerated.

10 (2) The criminal history information shall include the full
11 criminal record, if any, of those persons, and subsequent arrest
12 information pursuant to Section 11105.2 of the Penal Code.

13 (3) Except during the 2003–04 and 2004–05 fiscal years,
14 neither the Department of Justice nor the State Department of
15 Social Services may charge a fee for the fingerprinting of an
16 applicant for a license or special permit to operate a facility
17 providing nonmedical board, room, and care for six or less
18 children or for obtaining a criminal record of the applicant
19 pursuant to this section.

20 (4) The following shall apply to the criminal record
21 information:

22 (A) If the State Department of Social Services finds that the
23 applicant, or any other person specified in subdivision (b), has
24 been convicted of a crime other than a minor traffic violation, the
25 application shall be denied, unless the director grants an
26 exemption pursuant to subdivision (g).

27 (B) If the State Department of Social Services finds that the
28 applicant, or any other person specified in subdivision (b) is
29 awaiting trial for a crime other than a minor traffic violation, the
30 State Department of Social Services may cease processing the
31 application until the conclusion of the trial.

32 (C) If no criminal record information has been recorded, the
33 Department of Justice shall provide the applicant and the State
34 Department of Social Services with a statement of that fact.

35 (D) If the State Department of Social Services finds after
36 licensure that the licensee, or any other person specified in
37 paragraph (2) of subdivision (b), has been convicted of a crime
38 other than a minor traffic violation, the license may be revoked,
39 unless the director grants an exemption pursuant to subdivision
40 (g).

1 (E) An applicant and any other person specified in subdivision
2 (b) shall submit a second set of fingerprints to the Department of
3 Justice for the purpose of searching the criminal records of the
4 Federal Bureau of Investigation, in addition to the criminal
5 records search required by this subdivision. If an applicant and
6 all other persons described in subdivision (b) meet all of the
7 conditions for licensure, except receipt of the Federal Bureau of
8 Investigation's criminal history information for the applicant or
9 any of the persons described in subdivision (b), the department
10 may issue a license if the applicant and each person described in
11 subdivision (b) has signed and submitted a statement that he or
12 she has never been convicted of a crime in the United States,
13 other than a traffic infraction, as defined in paragraph (1) of
14 subdivision (a) of Section 42001 of the Vehicle Code. If, after
15 licensure, the department determines that the licensee or any
16 other person specified in subdivision (b) has a criminal record,
17 the license may be revoked pursuant to Section 1550. The
18 department may also suspend the license pending an
19 administrative hearing pursuant to Section 1550.5.

20 (b) (1) In addition to the applicant, this section shall be
21 applicable to criminal convictions of the following persons:

22 (A) Adults responsible for administration or direct supervision
23 of staff.

24 (B) Any person, other than a client, residing in the facility.

25 (C) Any person who provides client assistance in dressing,
26 grooming, bathing, or personal hygiene. Any nurse assistant or
27 home health aide meeting the requirements of Section 1338.5 or
28 1736.6, respectively, who is not employed, retained, or
29 contracted by the licensee, and who has been certified or
30 recertified on or after July 1, 1998, shall be deemed to meet the
31 criminal record clearance requirements of this section. A certified
32 nurse assistant and certified home health aide who will be
33 providing client assistance and who falls under this exemption
34 shall provide one copy of his or her current certification, prior to
35 providing care, to the community care facility. The facility shall
36 maintain the copy of the certification on file as long as care is
37 being provided by the certified nurse assistant or certified home
38 health aide at the facility. Nothing in this paragraph restricts the
39 right of the department to exclude a certified nurse assistant or

1 certified home health aide from a licensed community care
2 facility pursuant to Section 1558.

3 (D) Any staff person, volunteer, or employee who has contact
4 with the clients.

5 (E) If the applicant is a firm, partnership, association, or
6 corporation, the chief executive officer or other person serving in
7 like capacity.

8 (F) Additional officers of the governing body of the applicant,
9 or other persons with a financial interest in the applicant, as
10 determined necessary by the department by regulation. The
11 criteria used in the development of these regulations shall be
12 based on the person's capability to exercise substantial influence
13 over the operation of the facility.

14 (2) The following persons are exempt from the requirements
15 applicable under paragraph (1):

16 (A) A medical professional as defined in department
17 regulations who holds a valid license or certification from the
18 person's governing California medical care regulatory entity and
19 who is not employed, retained, or contracted by the licensee if all
20 of the following apply:

21 (i) The criminal record of the person has been cleared as a
22 condition of licensure or certification by the person's governing
23 California medical care regulatory entity.

24 (ii) The person is providing time-limited specialized clinical
25 care or services.

26 (iii) The person is providing care or services within the
27 person's scope of practice.

28 (iv) The person is not a community care facility licensee or an
29 employee of the facility.

30 (B) A third-party repair person or similar retained contractor if
31 all of the following apply:

32 (i) The person is hired for a defined, time-limited job.

33 (ii) The person is not left alone with clients.

34 (iii) When clients are present in the room in which the
35 repairperson or contractor is working, a staff person who has a
36 criminal record clearance or exemption is also present.

37 (C) Employees of a licensed home health agency and other
38 members of licensed hospice interdisciplinary teams who have a
39 contract with a client or resident of the facility and are in the
40 facility at the request of that client or resident's legal

1 decisionmaker. The exemption does not apply to a person who is
2 a community care facility licensee or an employee of the facility.

3 (D) Clergy and other spiritual caregivers who are performing
4 services in common areas of the community care facility or who
5 are advising an individual client at the request of, or with the
6 permission of, the client or legal decisionmaker, are exempt from
7 fingerprint and criminal background check requirements imposed
8 by community care licensing. This exemption does not apply to a
9 person who is a community care licensee or employee of the
10 facility.

11 (E) Members of fraternal, service, or similar organizations
12 who conduct group activities for clients if all of the following
13 apply:

14 (i) Members are not left alone with clients.

15 (ii) Members do not transport clients off the facility premises.

16 (iii) The same organization does not conduct group activities
17 for clients more often than defined by the department's
18 regulations.

19 (3) In addition to the exemptions in paragraph (2), the
20 following persons in foster family homes, certified family homes,
21 and small family homes are exempt from the requirements
22 applicable under paragraph (1):

23 (A) Adult friends and family of ~~the licensee~~ *any licensed or*
24 *certified foster parent*, who come into the home to visit for a
25 length of time no longer than defined by the department in
26 regulations, provided that the adult friends and family of the
27 licensee are not left alone with the foster children, *except when*
28 *the licensee, acting as a prudent parent, would allow them to*
29 *supervise the foster child and act as an appropriate occasional*
30 *short-term babysitter for the child.*

31 (B) Parents of a foster child's friends when the foster child is
32 visiting the friend's home and the friend, *licensed or certified*
33 *foster parent*, or both are also present, *except when the licensee,*
34 *acting as a prudent parent, allows the foster child to visit the*
35 *friend's home without the friend being present.*

36 (C) *Individuals who are engaged by any licensed or certified*
37 *foster parent to supervise the child for periods not to exceed 24*
38 *hours. Caregivers shall use a prudent parent standard in*
39 *selecting appropriate individuals to act as appropriate*
40 *occasional short-term babysitters.*

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under

1 penalty of perjury regarding any prior criminal convictions. The
2 licensee shall submit these fingerprints to the Department of
3 Justice, along with a second set of fingerprints for the purpose of
4 searching the records of the Federal Bureau of Investigation, or
5 to comply with paragraph (1) of subdivision (h), prior to the
6 person's employment, residence, or initial presence in the
7 community care facility. These fingerprints shall be on a card
8 provided by the State Department of Social Services or sent by
9 electronic transmission in a manner approved by the State
10 Department of Social Services and the Department of Justice for
11 the purpose of obtaining a permanent set of fingerprints, and
12 shall be submitted to the Department of Justice by the licensee. A
13 licensee's failure to submit fingerprints to the Department of
14 Justice or to comply with paragraph (1) of subdivision (h), as
15 required in this section, shall result in the citation of a deficiency
16 and the immediate assessment of civil penalties in the amount of
17 one hundred dollars (\$100) per violation, per day for a maximum
18 of five days, unless the violation is a second or subsequent
19 violation within a 12-month period in which case the civil
20 penalties shall be in the amount of one hundred dollars (\$100)
21 per violation for a maximum of 30 days, and shall be grounds for
22 disciplining the licensee pursuant to Section 1550. The
23 department may assess civil penalties for continued violations as
24 permitted by Section 1548. The fingerprints shall then be
25 submitted to the State Department of Social Services for
26 processing. Upon request of the licensee, who shall enclose a
27 self-addressed stamped postcard for this purpose, the Department
28 of Justice shall verify receipt of the fingerprints.

29 (2) Within 14 calendar days of the receipt of the fingerprints,
30 the Department of Justice shall notify the State Department of
31 Social Services of the criminal record information, as provided
32 for in subdivision (a). If no criminal record information has been
33 recorded, the Department of Justice shall provide the licensee
34 and the State Department of Social Services with a statement of
35 that fact within 14 calendar days of receipt of the fingerprints.
36 Documentation of the individual's clearance or exemption shall
37 be maintained by the licensee and be available for inspection. If
38 new fingerprints are required for processing, the Department of
39 Justice shall, within 14 calendar days from the date of receipt of
40 the fingerprints, notify the licensee that the fingerprints were

illegible. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the State Department of Social Services, as required by that section, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation, per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure

1 to comply with the department's prohibition of employment,
2 contact with clients, or presence in the facility as required by this
3 paragraph shall be grounds for disciplining the licensee pursuant
4 to Section 1550.

5 (4) The department may issue an exemption on its own motion
6 pursuant to subdivision (g) if the person's criminal history
7 indicates that the person is of good character based on the age,
8 seriousness, and frequency of the conviction or convictions. The
9 department, in consultation with interested parties, shall develop
10 regulations to establish the criteria to grant an exemption
11 pursuant to this paragraph.

12 (5) Concurrently with notifying the licensee pursuant to
13 paragraph (3), the department shall notify the affected individual
14 of his or her right to seek an exemption pursuant to subdivision
15 (g). The individual may seek an exemption only if the licensee
16 terminates the person's employment or removes the person from
17 the facility after receiving notice from the department pursuant to
18 paragraph (3).

19 (d) (1) Before issuing a license, special permit, or certificate
20 of approval to any person or persons to operate or manage a
21 foster family home or certified family home as described in
22 Section 1506, the State Department of Social Services or other
23 approving authority shall secure from an appropriate law
24 enforcement agency a criminal record to determine whether the
25 applicant or any person specified in subdivision (b) has ever been
26 convicted of a crime other than a minor traffic violation or
27 arrested for any crime specified in Section 290 of the Penal
28 Code, for violating Section 245 or 273.5, subdivision (b) of
29 Section 273a or, prior to January 1, 1994, paragraph (2) of
30 Section 273a of the Penal Code, or for any crime for which the
31 department cannot grant an exemption if the person was
32 convicted and the person has not been exonerated.

33 (2) The criminal history information shall include the full
34 criminal record, if any, of those persons.

35 (3) Neither the Department of Justice nor the State Department
36 of Social Services may charge a fee for the fingerprinting of an
37 applicant for a license, special permit, or certificate of approval
38 described in this subdivision. The record, if any, shall be taken
39 into consideration when evaluating a prospective applicant.

1 (4) The following shall apply to the criminal record
2 information:

3 (A) If the applicant or other persons specified in subdivision
4 (b) have convictions that would make the applicant's home unfit
5 as a foster family home or a certified family home, the license,
6 special permit, or certificate of approval shall be denied.

7 (B) If the State Department of Social Services finds that the
8 applicant, or any person specified in subdivision (b) is awaiting
9 trial for a crime other than a minor traffic violation, the State
10 Department of Social Services or other approving authority may
11 cease processing the application until the conclusion of the trial.

12 (C) For the purposes of this subdivision, a criminal record
13 clearance provided under Section 8712 of the Family Code may
14 be used by the department or other approving agency.

15 (D) An applicant for a foster family home license or for
16 certification as a family home, and any other person specified in
17 subdivision (b), shall submit a set of fingerprints to the
18 Department of Justice for the purpose of searching the criminal
19 records of the Federal Bureau of Investigation, in addition to the
20 criminal records search required by subdivision (a). If an
21 applicant meets all other conditions for licensure, except receipt
22 of the Federal Bureau of Investigation's criminal history
23 information for the applicant and all persons described in
24 subdivision (b), the department may issue a license, or the foster
25 family agency may issue a certificate of approval, if the
26 applicant, and each person described in subdivision (b), has
27 signed and submitted a statement that he or she has never been
28 convicted of a crime in the United States, other than a traffic
29 infraction, as defined in paragraph (1) of subdivision (a) of
30 Section 42001 of the Vehicle Code. If, after licensure or
31 certification, the department determines that the licensee,
32 certified foster parent, or any person specified in subdivision (b)
33 has a criminal record, the license may be revoked pursuant to
34 Section 1550 and the certificate of approval revoked pursuant to
35 subdivision (b) of Section 1534. The department may also
36 suspend the license pending an administrative hearing pursuant
37 to Section 1550.5.

38 (5) Any person specified in this subdivision shall, as a part of
39 the application, be fingerprinted and sign a declaration under
40 penalty of perjury regarding any prior criminal convictions or

1 arrests for any crime against a child, spousal or cohabitant abuse
2 or, any crime for which the department cannot grant an
3 exemption if the person was convicted and shall submit these
4 fingerprints to the licensing agency or other approving authority.
5 (6) (A) The foster family agency shall obtain fingerprints
6 from certified home applicants and from persons specified in
7 subdivision (b) and shall submit them directly to the Department
8 of Justice or send them by electronic transmission in a manner
9 approved by the State Department of Social Services. A foster
10 family home licensee or foster family agency shall submit these
11 fingerprints to the Department of Justice, along with a second set
12 of fingerprints for the purpose of searching the records of the
13 Federal Bureau of Investigation or to comply with paragraph (1)
14 of subdivision (b) prior to the person's employment, residence, or
15 initial presence. A foster family agency's failure to submit
16 fingerprints to the Department of Justice, or comply with
17 paragraph (1) of subdivision (h), as required in this section, shall
18 result in a citation of a deficiency, and the immediate civil
19 penalties of one hundred dollars (\$100) per violation, per day for
20 a maximum of five days, unless the violation is a second or
21 subsequent violation within a 12-month period in which case the
22 civil penalties shall be in the amount of one hundred dollars
23 (\$100) per violation for a maximum of 30 days, and shall be
24 grounds for disciplining the licensee pursuant to Section 1550. A
25 violation of the regulation adopted pursuant to Section 1522.04
26 shall result in the citation of a deficiency and an immediate
27 assessment of civil penalties in the amount of one hundred
28 dollars (\$100) per violation, per day for a maximum of five days,
29 unless the violation is a second or subsequent violation within a
30 12-month period in which case the civil penalties shall be in the
31 amount of one hundred dollars (\$100) per violation for a
32 maximum of 30 days, and shall be grounds for disciplining the
33 foster family agency pursuant to Section 1550. A licensee's
34 failure to submit fingerprints to the Department of Justice, or
35 comply with paragraph (1) of subdivision (h), as required in this
36 section, may result in the citation of a deficiency and immediate
37 civil penalties of one hundred dollars (\$100) per violation. A
38 licensee's violation of regulations adopted pursuant to Section
39 1522.04 may result in the citation of a deficiency and an
40 immediate assessment of civil penalties in the amount of one

1 hundred dollars (\$100) per violation. The State Department of
2 Social Services may assess penalties for continued violations, as
3 permitted by Section 1548. The fingerprints shall then be
4 submitted to the State Department of Social Services for
5 processing.

6 (B) Upon request of the licensee, who shall enclose a
7 self-addressed envelope for this purpose, the Department of
8 Justice shall verify receipt of the fingerprints. Within five
9 working days of the receipt of the criminal record or information
10 regarding criminal convictions from the Department of Justice,
11 the department shall notify the applicant of any criminal arrests
12 or convictions. If no arrests or convictions are recorded, the
13 Department of Justice shall provide the foster family home
14 licensee or the foster family agency with a statement of that fact
15 concurrent with providing the information to the State
16 Department of Social Services.

17 (7) If the State Department of Social Services finds that the
18 applicant, or any other person specified in subdivision (b), has
19 been convicted of a crime other than a minor traffic violation, the
20 application shall be denied, unless the director grants an
21 exemption pursuant to subdivision (g).

22 (8) If the State Department of Social Services finds after
23 licensure or the granting of the certificate of approval that the
24 licensee, certified foster parent, or any other person specified in
25 paragraph (2) of subdivision (b), has been convicted of a crime
26 other than a minor traffic violation, the license or certificate of
27 approval may be revoked by the department or the foster family
28 agency, whichever is applicable, unless the director grants an
29 exemption pursuant to subdivision (g). A licensee's failure to
30 comply with the department's prohibition of employment,
31 contact with clients, or presence in the facility as required by
32 paragraph (3) of subdivision (c) shall be grounds for disciplining
33 the licensee pursuant to Section 1550.

34 (e) The State Department of Social Services may not use a
35 record of arrest to deny, revoke, or terminate any application,
36 license, employment, or residence unless the department
37 investigates the incident and secures evidence, whether or not
38 related to the incident of arrest, that is admissible in an
39 administrative hearing to establish conduct by the person that
40 may pose a risk to the health and safety of any person who is or

1 may become a client. The State Department of Social Services is
2 authorized to obtain any arrest or conviction records or reports
3 from any law enforcement agency as necessary to the
4 performance of its duties to inspect, license, and investigate
5 community care facilities and individuals associated with a
6 community care facility.

7 (f) (1) For purposes of this section or any other provision of
8 this chapter, a conviction means a plea or verdict of guilty or a
9 conviction following a plea of nolo contendere. Any action that
10 the State Department of Social Services is permitted to take
11 following the establishment of a conviction may be taken when
12 the time for appeal has elapsed, when the judgment of conviction
13 has been affirmed on appeal, or when an order granting probation
14 is made suspending the imposition of sentence, notwithstanding
15 a subsequent order pursuant to Sections 1203.4 and 1203.4a of
16 the Penal Code permitting the person to withdraw his or her plea
17 of guilty and to enter a plea of not guilty, or setting aside the
18 verdict of guilty, or dismissing the accusation, information, or
19 indictment. For purposes of this section or any other provision of
20 this chapter, the record of a conviction, or a copy thereof certified
21 by the clerk of the court or by a judge of the court in which the
22 conviction occurred, shall be conclusive evidence of the
23 conviction. For purposes of this section or any other provision of
24 this chapter, the arrest disposition report certified by the
25 Department of Justice, or documents admissible in a criminal
26 action pursuant to Section 969b of the Penal Code, shall be prima
27 facie evidence of the conviction, notwithstanding any other
28 provision of law prohibiting the admission of these documents in
29 a civil or administrative action.

30 (2) For purposes of this section or any other provision of this
31 chapter, the department shall consider criminal convictions from
32 another state or federal court as if the criminal offense was
33 committed in this state.

34 (g) (1) After review of the record, the director may grant an
35 exemption from disqualification for a license or special permit as
36 specified in paragraphs (1) and (4) of subdivision (a), or for a
37 license, special permit, or certificate of approval as specified in
38 paragraphs (4) and (5) of subdivision (d), or for employment,
39 residence, or presence in a community care facility as specified
40 in paragraphs (3), (4), and (5) of subdivision (c), if the director

1 has substantial and convincing evidence to support a reasonable
2 belief that the applicant and the person convicted of the crime, if
3 other than the applicant, are of such good character as to justify
4 issuance of the license or special permit or granting an exemption
5 for purposes of subdivision (c). Except as otherwise provided in
6 this subdivision, an exemption may not be granted pursuant to
7 this subdivision if the conviction was for any of the following
8 offenses:

9 (A) (i) An offense specified in Section 220, 243.4, or 264.1,
10 subdivision (a) of Section 273a or, prior to January 1, 1994,
11 paragraph (1) of Section 273a, Section 273d, 288, or 289,
12 subdivision (a) of Section 290, or Section 368 of the Penal Code,
13 or was a conviction of another crime against an individual
14 specified in subdivision (c) of Section 667.5 of the Penal Code.

15 (ii) Notwithstanding clause (i), the director may grant an
16 exemption regarding the conviction for an offense described in
17 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
18 of the Penal Code, if the employee or prospective employee has
19 been rehabilitated as provided in Section 4852.03 of the Penal
20 Code, has maintained the conduct required in Section 4852.05 of
21 the Penal Code for at least 10 years, and has the recommendation
22 of the district attorney representing the employee's county of
23 residence, or if the employee or prospective employee has
24 received a certificate of rehabilitation pursuant to Chapter 3.5
25 (commencing with Section 4852.01) of Title 6 of Part 3 of the
26 Penal Code.

27 (B) A felony offense specified in Section 729 of the Business
28 and Professions Code or Section 206 or 215, subdivision (a) of
29 Section 347, subdivision (b) of Section 417, or subdivision (a) of
30 Section 451 of the Penal Code.

31 (2) The department may not prohibit a person from being
32 employed or having contact with clients in a facility on the basis
33 of a denied criminal record exemption request or arrest
34 information unless the department complies with the
35 requirements of Section 1558.

36 (h) (1) For purposes of compliance with this section, the
37 department may permit an individual to transfer a current
38 criminal record clearance, as defined in subdivision (a), from one
39 facility to another, as long as the criminal record clearance has
40 been processed through a state licensing district office, and is

1 being transferred to another facility licensed by a state licensing
2 district office. The request shall be in writing to the State
3 Department of Social Services, and shall include a copy of the
4 person's driver's license or valid identification card issued by the
5 Department of Motor Vehicles, or a valid photo identification
6 issued by another state or the United States government if the
7 person is not a California resident. Upon request of the licensee,
8 who shall enclose a self-addressed envelope for this purpose, the
9 State Department of Social Services shall verify whether the
10 individual has a clearance that can be transferred.

11 (2) The State Department of Social Services shall hold
12 criminal record clearances in its active files for a minimum of
13 two years after an employee is no longer employed at a licensed
14 facility in order for the criminal record clearance to be
15 transferred.

16 (3) The following shall apply to a criminal record clearance or
17 exemption from the department or a county office with
18 department delegated licensing authority:

19 (A) A county office with department delegated licensing
20 authority may accept a clearance or exemption from the
21 department.

22 (B) The department may accept a clearance or exemption from
23 any county office with department delegated licensing authority.

24 (C) A county office with department delegated licensing
25 authority may accept a clearance or exemption from any other
26 county office with department delegated licensing authority.

27 (4) With respect to notifications issued by the Department of
28 Justice pursuant to Section 11105.2 of the Penal Code concerning
29 an individual whose criminal record clearance was originally
30 processed by the department or a county office with department
31 delegated licensing authority, all of the following shall apply:

32 (A) The Department of Justice shall process a request from the
33 department or a county office with department delegated
34 licensing authority to receive the notice only if all of the
35 following conditions are met:

36 (i) The request shall be submitted to the Department of Justice
37 by the agency to be substituted to receive the notification.

38 (ii) The request shall be for the same applicant type as the type
39 for which the original clearance was obtained.

1 (iii) The request shall contain all prescribed data elements and
2 format protocols pursuant to a written agreement between the
3 department and the Department of Justice.

4 (B) (i) On or before January 7, 2005, the department shall
5 notify the Department of Justice of all county offices that have
6 department delegated licensing authority.

7 (ii) The department shall notify the Department of Justice
8 within 15 calendar days of the date on which a new county office
9 receives department delegated licensing authority or a county's
10 delegated licensing authority is rescinded.

11 (C) The Department of Justice shall charge the department or
12 a county office with department delegated licensing authority a
13 fee for each time a request to substitute the recipient agency is
14 received for purposes of this paragraph. This fee shall not exceed
15 the cost of providing the service.

16 (i) The full criminal record obtained for purposes of this
17 section may be used by the department or by a licensed adoption
18 agency as a clearance required for adoption purposes.

19 (j) If a licensee or facility is required by law to deny
20 employment or to terminate employment of any employee based
21 on written notification from the state department that the
22 employee has a prior criminal conviction or is determined
23 unsuitable for employment under Section 1558, the licensee or
24 facility shall not incur civil liability or unemployment insurance
25 liability as a result of that denial or termination.

26 (k) (1) The Department of Justice shall coordinate with the
27 State Department of Social Services to establish and implement
28 an automated live-scan processing system for fingerprints in the
29 district offices of the Community Care Licensing Division of the
30 State Department of Social Services by July 1, 1999. These
31 live-scan processing units shall be connected to the main system
32 at the Department of Justice by July 1, 1999, and shall become
33 part of that department's pilot project in accordance with its
34 long-range plan. The State Department of Social Services may
35 charge a fee for the costs of processing a set of live-scan
36 fingerprints.

37 (2) The Department of Justice shall provide a report to the
38 Senate and Assembly fiscal committees, the Assembly Human
39 Services Committee, and to the Senate Health and Human
40 Services Committee by April 15, 1999, regarding the completion

1 of backlogged criminal record clearance requests for all facilities
2 licensed by the State Department of Social Services and the
3 progress on implementing the automated live-scan processing
4 system in the two district offices pursuant to paragraph (1).

5 (I) Amendments to this section made in the 1999 portion of the
6 1999–2000 Regular Session shall be implemented commencing
7 60 days after the effective date of the act amending this section in
8 the 1999 portion of the 1999–2000 Regular Session, except that
9 those provisions for the submission of fingerprints for searching
10 the records of the Federal Bureau of Investigation shall be
11 implemented 90 days after the effective date of that act.

12 SEC. 3. Section 362.05 of the Welfare and Institutions Code
13 is amended to read:

14 362.05. (a) *For purposes of this section:*

15 (1) “Caregiver” means any licensed or certified foster parent,
16 approved relative caregiver, or approved nonrelative extended
17 family members caring for a foster child.

18 (2) “Short-term” means no more than 24 hours.

19 (b) Every child adjudged a dependent child of the juvenile
20 court shall be entitled to participate in age-appropriate
21 extracurricular, enrichment, and social activities. No state or
22 local regulation or policy may prevent or create barriers to
23 participation in those activities. ~~Each~~

24 (c) *Every caregiver shall be permitted to arrange for*
25 *occasional short-term babysitting of their foster child and allow*
26 *individuals to supervise the foster child, as long as the caregiver*
27 *is acting as a prudent parent when making those arrangements.*

28 (d) *Each state and local entity shall ensure that private*
29 *agencies that provide foster care services to dependent children*
30 *have policies consistent with this section*~~and that those. County~~
31 *child welfare agencies and private agencies shall promote and*
32 *protect the ability of dependent children to participate in*
33 *age-appropriate extracurricular, enrichment, and social activities,*
34 *and shall permit their caregivers to arrange occasional*
35 *short-term babysitting for the child.* Caregivers shall use a
36 prudent parent standard in determining whether to give
37 permission for a child residing in foster care to participate in
38 extracurricular, enrichment, and social activities, *and in selecting*
39 *appropriate babysitters.* ~~The caretaker~~ caregiver shall take
40 reasonable steps to determine the appropriateness of activities for

- 1 the ~~activity~~ *child* in consideration of the child's age, maturity,
- 2 and developmental level, *and in selecting appropriate babysitters*
- 3 *for occasional short-term use.*

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